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IN THE

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1900.

No. 215. (17,658).

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R. RASMUSSEN,
Plaintiff in Error.

vs.

THE STATE OF IDAHO.

In Error to the Supreme Court of the State of Idaho.

BRIEF FOR DEFENDANT IN ERROR.

SAMUEL H. HAYS,
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For Defendant in Error.

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STATEMENT.

The plaintiff in error was charged with a violation of the sheep quarantine law and regulations of the State of Idaho.

A trial was had before the District Court for Oneida County and the defendant was on June 14th, 1899, found guilty as charged in the information. An appeal was taken to the State Supreme Court and the judgment was there affirmed. (59 Pac. Rep. 933). The case now comes to this Court on writ of error, it being contended that the law in question violates Section 8 Article 1 and Section 2 Article 4 of the Constitution of the United States.

The Act of March 13th, 1899; Session Laws 1899 page 452, is as follows:

> "Section 1. Whenever the Governor of the State of Idaho has reasons to believe that scab or any other infectious disease of sheep has become epidemic in certain localities in any other State or Territory, or that conditions exist that render sheep likely to convey disease, he must thereupon by proclamation, designate such localities and prohibit the importation from them of any sheep into the State, except under such restrictions as, after consultation with the State Sheep Inspector, he may deem proper.
>
> Any person or corporation who, after publication of such proclamation, receives in charge any such sheep from any of the prohibited districts and transports, conveys or drives the same to and within the limits of any of the counties of this State, is punishable by a fine not exceeding $1000 nor less than $200, and is liable for all damages that may be sustained by any person by reason

of the importation or transportation of such prohibited sheep.

Section 2. Upon issuing such proclamation the owners or persons in charge of any sheep being shipped into Idaho, against which quarantine has been declared, must forthwith notify the Deputy Inspector of the county into which such sheep first come, of such arrival, and such owner or persons in charge must not allow any sheep so quarantined to pass over or upon any public highway, or upon the ranges occupied by other sheep or within five miles of any corral in which sheep are usually corralled until such sheep have first been inspected, and any person failing to comply with the provisions of this section is punishable as provided in Section one of this Act, and is liable for all damages sustained by any person by reason of the failure to comply with the provisions of this section.

Section 3. Whereas an emergency exists, this Act shall be in force and effect from and after its passage."

Under and by virtue of Section one of this Act the Governor of Idaho, issued his proclamation, which is as follows:

"Whereas I have received statements from reliable wool-growers and stock-raisers of the State of Idaho, said statements being supplemented by affidavits of reputable persons, all to the effect that the disease know as scab or scabbies is epi-

demic among sheep in certain localities or districts, viz: In the County of Cache, State of Utah; the County of Box Elder, in the State of Utah; and the County of Elko, in the State of Nevada; and

Whereas, it is known that sheep from said districts are annually moved, driven or imported into the State of Idaho, and if so moved would thereby spread infection and disease on the ranges and among the sheep of this State, which act would result in great disaster.

Now, therefore, I, Frank Steunenberg, Governor of the State of Idaho, by virtue of authority in me vested, and after due consultation with the State Sheep Inspector, do hereby prohibit the importation, driving or moving into the State of Idaho of all sheep now being held, herded or ranged within said infected districts, viz: The County of Cache, in the State of Utah; the County or Box Elder, in the State of Utah, and the County of Elko, in the State of Nevada, or which may hereafter be held, herded or ranged within said infected districts, for a period of sixty days from and after the date of this proclamation; after the termination of said sixty days sheep can be moved into this State only upon compliance with the laws of the State of Idaho regarding the inspection and dipping of sheep."

This proclamation was issued on the 12th day of April, 1899. The offense was committed on or about the 20th day of April, 1899.

Plaintiff in error contends that the law above quoted taken in connection with the proclamation is an interference with interstate commerce and therefore void.

It appears from the record that plaintiff in error was in charge of six herds of sheep aggregating about fifteen thousand head in Box Elder County, Utah, on April 12th, 1899. (Trans. pg. 9). At the trial he was asked: "Did your sheep have scabbies or scab?" Trans-pg. 10). Which question was objected to and the objection sustained. Plaintiff in error then offered to show that none of the sheep in question had the scab or scabbies and also that they did not have any indications or hint of having any disease whatever at the time of coming into the State. This offer of proof was rejected. Although there are a number of assignments of error the question at issue was chiefly raised in the manner above mentioned.

ARGUMENT.

In the State Court in addition to the Federal question it was urged:

1. That the act delegates legislative power to the Governor.

2. That the proclamation is insufficient and was not in force until April 13th.

4. That the proclamation was not proved.

5. That the venue was not properly laid.

These points are not now open for discussion in this Court since they raise no Federal question. As to the proper construction of the State Statute and what is

to be regarded as among its terms, no Federal question can arise.

Morley vs. Lake Shore & M. S. R. Co., 146, U. S. 162.

The objection of plaintiff in error does not go so much to the statute as to the manner in which the Governor administered it.

This Court held in New Orleans Waterworks Co. vs. Louisiana Sugar Refining Co., 125 U. S. 18, quoting from another decision that: "Any enactment from whatever source originating, to which a State gives the force of law, is a statute of the State within the meaning of the clause cited relating to the jurisdiction of this Court." In that case it was further held that the provision of the Constitution there in question was aimed at the legislative power of the State and not at the decisions of its Courts or the acts of administrative or executive boards or officers. See also:

Lent vs. Tillson, 140 U. S., 316.
Louisiana vs. Texas, 176 U. S., 1.

If however this Court has jurisdiction, the question then to be considered is whether or not the statute taken in connection with the proclamation is an attempted regulation of interstate commerce or whether it is a quarantine law, as held by the State Court.

Quarantine laws in various forms for preventing the spread of disease among animals are of ancient origin but it is only within the last forty years that the matter has received particular attention. The first Act of Con-

gress on the subject seems to have been passed in 1865 and amended in 1866. (Sec. 2493-5 R. S. United States.). No further legislation was had until 1884, when the Bureau of Animal Industry was established This was followed by the Act of August 30th, 1890, the Acts of March 3rd, 1891, and the Act of March 2nd, 1895.

In the State of Idaho the first statute relating to the subject was passed in 1889. This was repealed in 1891 and in 1895 a new act was passed which was amended in 1897. The amended act was found unconstitutional in part and was followed by the act here in question passed in 1899.

The stock interests particularly in the west are so important and the ravages of disease so great that the growth of the law in late years has been rapid.

In answering the plaintiff in error we contend:

1. That a State may pass a reasonable quarantine law for the protection of domestic animals.

2. That under such a law a quarantine may, if necessary, be declared against a locality where an epidemic exists.

3. That the statute and proclamation provide a reasonable quarantine regulation.

We will first consider the question:

I.

Can the State pass this kind of a quarantine law?

By the Constitution the power "to regulate commerce among the several states" is given to Congress. This may be taken as a grant of general power and necessary incidental powers.

The legislation of Congress pertinent to the present inquiry is Sections 3, 6 and 7 of the Act of May 29th, 1884. (23 Stat. at Large 31)

Those sections are as follows:

"Section 3. That it shall be the duty of the Commissioner of Agriculture to prepare such rules and regulations as he may deem necessary for the speedy and effectual suppression and extirpation of said diseases, and to certify such rules and regulations to the executive authority of each State and Territory and invite said authorities to co-operate in the execution and enforcement of this act. Whenever the plans and methods of the Commissioner of Agriculture shall be accepted by any State or Territory in which pleuro-pneumonia or other contagious, infectious or communicable disease is declared to exist or such State or Territory shall have adopted plans and methods for the suppression and extirpation of said diseases, and such plans and methods shall be accepted by the Commissioner of Agriculture, and whenever the Governor of a State or other properly constituted authorities signify their readiness to co-operate for the extinction of any contagious, infectious or communicable disease in conformity with the provisions of this Act, the Commissioner of Agriculture is hereby authorized to expend so much of the money appropriated by this Act, as may be necessary in such investigations and in such disinfection and quarantine measures as may be nec-

essary to prevent the spread of the disease from one State or Territory into another.

Section 6. That no railroad company within the United States, or the owners or masters of any steam or sailing or other vessel or boat shall receive for transportation or transport from one State or Territory to another, or from any state into the District of Columbia or from the District into any State any live stock affected with any contagious, infectious or communicable disease and especially the disease known as pleuro-pneumonia; nor shall any person, company or corporation deliver for such transportation to any railroad company, or master or owner of any boat or vessel, any live stock knowing them to be affected with any contagious, infectious or communicable disease; nor shall any person, company or corporation drive on foot or transport in private conveyance from one State or Territory to another, or from any State into the District of Columbia, or from the District into any State any live stock, knowing them to be affected with any contagious, infectious or communicable disease, and especially the disease known as pleuro-pneumonia; Provided, That the so-called spleuetic or Texas fever shall not be considered a contagious, infectious or communicable disease within the meaning of Sections four, five, six and seven of this Act, as to cattle being transported by rail to market for slaughter when the same are unloaded only to be fed and watered in lots on the way thereto.

Section 7. That it shall be the duty of the Commissioner of Agriculture to notify in writing the proper officials or agents of any railroad, steamboat or other transportation company doing business in or through any infected locality, and by publication in such newspapers as he may select, of the existence of said contagion; and any person or persons operating any such railroad, or master or owner of any boat or vessel or owner or custodian of or person having control over such cattle or other live stock within such infected district, who shall knowingly violate the provisions of Section six of this Act, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than five thousand dollars, or by imprisonment for not more than one year or by both such fine and imprisonment."

Whether or not the rules and regulations which seem to have been promulgated by the Department in 1887, were ever certified to the authorities of the State of Idaho, or not, is not shown by the record and we have been unable to learn. In any event, although the record is silent on the subject, there has been no acceptance of the regulations by the State and no cooperation between the State and National Governments. In fact, there is and has been no law of the State whereby the rules of the Department could be adopted or joint action taken. Is the State then, barred from enacting the statute in question. We insist not. The Act did not purport to take from the State

the power claimed, but on the contrary under the terms of Section three, there was a direct acknowledgement of it. The Act sought to secure co-operation. There having been no acceptance by the State of the rules and regulations of the Department the remaining question is whether or not the enactment by Congress of Sections six and seven is a bar to the State law. These sections in substance provided that it should be a misdemeanor to drive stock from one state to another knowing them to be affected with disease. These sections are in no sense a quarantine measure framed for the purpose of preventing the spread of disease.

We think the question is settled by the decision of this Court in the case of Missouri, K. & T. R. Co., vs. Haber, 169 U. S., 613, where the act of Congress mentioned and a somewhat similar State statute were under consideration. It was there said:

> "May not these statutory provision (the State statute) stand without obstructing or embarassing the execution of the act of Congress?
>
> This question, must, of course, be determined with reference to the settled rule that a statute enacted in execution of a reserved power of the State is not to be regarded as inconsistent with an act of Congress passed in the execution of a clear power under the Constitution, unless the repugnance or conflict is so direct and positive that the two acts cannot be reconciled or stand together. Sinnot vs. Davenport, 22 How. 227.
>
> We have seen that the first section of the Animal Industry Act provided for an investigation as

to the condition of the domestic animals of the United States, their protection and use, the causes of contagious, infectious and communicable diseases among them, and the means for the prevention and cure of such diseases. The second section provided for an examination as to the best methods of treating, transporting and caring for animals and the means to be adopted for the suppression and extirpation of contagious pleuropneumonia and to guard against the spreading of other dangerous, contagious, infectious and communicable diseases. If any state was ready to cooperate with the Commissioner of Agriculture then, by the third section that officer was authorized to use the money appropriated by Congress in such investigations and in such disinfection and quarantine measures as were necessary "to prevent the spread of the disease from one state or territory to another." While the states were invited to co-operate with the general government in the execution and enforcement of the act, whatever power they had to protect their domestic cattle against such diseases was left untouched and unimpaired by the act of Congress."

This principle was recognized in the case of Railroad Co. vs. Huson, 95 U. S. 465, so much relied in by plaintiff in error, where it was read:

> "It may also be admitted that the police powers of the State justify the adoption of precautionary measures against social evils. Under it a State may legislate to prevent the spread of crime or

pauperism or disturbances of the peace. It may exclude from its limits convicts, paupers, idiots and lunatics, and persons likely to become a public charge as well as persons afflicted by contagious or infectious diseases; a right founded, as intimated in The Passenger Cases, 7 How. 283, by Grier, J., in the sacred law of self-defense. The same principle it may also be conceded would justify the exclusion of property dangerous to the property of citizens of the State; for example animals having contagious or infectious diseases."

Likewise in Patterson vs. Kentucky, 97 U. S. 501, the Court says:

"We have frequently decided that the police power of the States was not surrendered when the people of the United States conferred upon Congress the general power to regulate commerce with foreign nations and between the several States. Hence, the States may by police regulations protect their people against the introduction within their respective limits of infected merchandise. 'A bale of goods upon which the duties have, or have not, been paid, laden with infection, may be seized under health laws, and if it cannot be purged of its poison, may be committed to the flames.' (Gilman vs. Philadelphia, 3 Wall. 713.) So may the States by like regulations exclude from their midst not only convicts, paupers, idiots, lunatics and persons likely to become a public charge but animals having contagious diseases."

And in Railroad Co. vs. Kentucky, 161 U. S. ~~699~~ 701, in quoting from another case, it was said:

> "In conferring upon Congress the regulation of commerce it was never intended to cut the States off from legislating on all subjects relating to the health, life and safety of their citizens, though the legislation might indirectly affect the commerce of the country."

Animals which are infected with or which are from the circumstances of their situation likely to convey disease are not merchantable or marketable and are not a proper subject of commerce.

As was said in Gilman vs. Phalidelphia 3 Wall. 713:

> "A bale of goods, upon which the duties have or have not been paid, laden with infection may be seized under health laws, and if it cannot be purged of its poison, may be committed to the flames."

In the License Cases (5 How. 576), it was said:

> "But it must be remembered that disease, pestilence and pauperism are not subjects of commerce, although sometimes among its attendant evils. They are not things to be regulated and trafficked in, but to be prevented as far as human foresight or human means can guard against them."

Likewise in Gibbons vs. Ogden, 9 Wheat. ~~393~~ 235, where it was said by Justice Johnson:

> "It is no objection to the existence of distinct substantive powers that in their application they bear upon the same subject. The same bale of goods, the same cask of provisions or the same

ship that may be the subject of commercial regulation may also be the vehicle of disease. And the health laws that require them to be stopped and ventilated are no more intended as regulations of commerce than the laws which permit their importation are intended to innoculate the community with disease."

We submit that where the State has not accepted the provisions of Section three of the Animal Industry Act that it still has the power to enact and enforce a reasonable quarantine law.

II.

May a quarantine be declared against all animals from a locality where a disease is epidemic?

Quarantine laws are intended to prevent the spread of disease and it follows from the nature of contagious diseases that not only must animals bearing the visible marks of disease be barred but that animals coming from a locality where a disease is epidemic and which are therefore likely to carry disease may be quarantined. Health officers are justified in taking the greatest care for the prevention of disease.

Seavey vs. Preble, 64 Me. 120.

A civilized community should be satisfied with nothing less.

All quarantine laws worthy of the name provide for the execlusion of persons, merchandise or animals coming from infected districts.

Sup. U. S. Rev. Stat. (2nd Ed.) pg. 796-7, Sec. 6 and 9.

Political Code Montana, Secs. 3008 and 3035.

Laws of Wyoming 1899, Sec. 2081-2.

Political Code California, Sec. 3017.

Rev. Stat. Utah. (1898) Sec. 1110.

27 U. S. Stat. at Large, pg. 452, Sec. 7.

Compiled Laws of Nevada (1900) Sec. 825.

Revised Codes N. Dakota (1899) Sec. 1600.

Civil Code Alabama (1896) Sec. 2403.

See also:

Parker & Worthington on Public Health and Safety Sec. 28.

Statutory provisions of this kind have been upheld by the Courts. See:

Hurst vs. Warner, 60 N. W. 440.

Minneapolis St. P. & S. S. Ry. vs. Milner 57 Fed. 276.

St. Louis & S. W. Ry. vs. Smith, 49 S. W. 627.

Compagnie Francaise de Nav. vs. State Board, 25 So. 591.

Young vs. Flower, 22 N. Y. Sup. 532.

The disinfection of an entire class of goods may be required whether actually infected or not.

Train vs. Boston Disinfect. Co. 144 Mass. 523.

Compulsory vaccination has been required.

Morris vs. City of Columbus, 30 S. E. 850.

Duffield vs. School District, 162 Pa. St. 476.

Abeel vs. Clark, 84 Cal. 226.

See also:

Blue vs. Beach, 56 N. E. 89.

This quarantine is nothing more than a quarantine against an infected district, which is clearly justifiable. The offer of proof by plaintiff in error (Trans. pgs. 10 and 11) was as follows: "I offer to show that none of the sheep that he drove into Cassia County had the scab or scabbies, that not one of the sheep that he drove into Oneida County had the scab or scabbies, or any other disease.

* * * * * * * * * * *

I will add that they did not have any indications or hint of having any disease whatever, at the time they came into Cassia County or Oneida County."

This offer was certainly as broad as the circumstances would permit considering the fact that there were fifteen thousand sheep (Trans. pg. 9); that they had just been in a district where the disease was prevalent and the further fact that the disease is caused by a mite or parasite which is for practical purposes microscopic and hides itself where the wool is most abundant. (See, Bulletin 21 on Sheep Scab, page 10; issued by Bureau of Animal Industry.) Also from the further fact that the "tags" of wool which are the first visible signs of the disease may not appear until several weeks after inoculation. Even taking the offer as true the sheep may have been carrying contagion and still have given no hint or indication of having the disease. It is this particular danger that a quarantine of this kind is aimed at.

The Idaho law made it the duty of the Governor to issue his proclamation whenever he found conditions

existing that required it, and it was never intended that the question of the necessity for the proclamation should be submitted to a jury in each case of a prosecution under it. Further than that in this case there was no offer to prove that scab was not epidemic in the districts named or that no necessity existed for issuing the proclamation. Perhaps such proof would not be admissible, but in any event the result is the same, the existence of the disease and the necessity of a proclamation are admitted by the record. The State can not be called on as a preliminary to a prosecution of this kind to show the good faith of its executive. It is his duty to uphold the Constitution and laws of the United States as well as those of the State. A liberal construction should be given to the acts of health officers.

Hengehold vs. Covington, 57 S. W. 495.

This brings us to what we believe to be the important question in the case.

III.

Was the exclusion of all sheep coming from the infected district, for the period of sixty days a reasonable quarantine regulation?

In City of St. Louis vs. Boffinger, 19 Mo. 13, the Court said:

> "If the real resign of the ordinance is a quarantine regulation to guard against the introduction of disease into the city, we will not undertake to determine whether some other measure interfering less with commerce could not as well have accomplished the object."

Whether a regulation of this kind is reasonable or not must depend largely on the nature of the disease to be prevented. In the Bulletin on Sheep Scab, issued by the Bureau of Animal Industry (No. 21 page 8) it is said:

> "The losses from sheep scab have been and are still very severe in most sheep-raising countries. They are due to the shedding of the wool, the loss of condition and the death of the sheep.
>
> Although laws were made for the control of the disease as early as the beginning of the eleventh century, general ignorance in regard to its nature and proper treatment has prevented the successful administration of such laws even to the present day. The disease exists in most of the countries of Europe and also in Asia and Africa, and until recently in Australia. Most civilized countries now control the disease to a certain extent, and limit the losses by the enforcement of stringent sanitary regulations; but the extent of its prevalence is nevertheless surprising. It is a disease not difficult to cure and eradicate and an accurate knowledge of its characterictics with attention to details are all that are needed to secure this result.
>
> In the United States some sections have been overrun with sheep scab and many persons engaged in the sheep industry have been forced to forsake it because of their losses from this disease. It is probable that in its destruction of invested capital sheep scab is second only to hog cholera among our animal diseases. The large flocks of

the plains and Rocky Mountain region and the feeding stations farther east have suffered severely and are constantly sending diseased sheep to the great stock yards of this country.

In addition to the direct losses in wool, in flesh and in the lives of our sheep we have suffered immensely in our foreign trade because of the prevalence of this disease. Great Britain appears to have been the first country to prohibit live sheep coming from the United States by an order issued in 1879. Upon representations that there was no foot and mouth disease in the United States this order was rescinded in 1892, but only to be again enforced in 1896 on account of the many scabby sheep sent abroad by our exporters. Our sheep are consequently slaughtered on the docks where landed, the market being restricted and the prices much less favorable than would otherwise be obtained. The markets of continental Europe have been entirely closed to American sheep, as even the privilege of slaughtering at the landing places is denied." (Page 8 Bulletin 21.)

The increase in the number of the sheep and the consequent crowding of the ranges have made conditions worse than in 1898, when the Bulletin was issued.

The sheep here in question came from Utah into Idaho. Utah has been behind all other sheep raising Western states in the enactment of appropriate and effective sheep quarantine laws, but even in that state the diseased condition of its sheep has been recognized.

Section 63 Rev. Stat. Utah (1898) is as follows:

"Every person owning, controlling or ranging sheep in the State shall have all such sheep thoroughly dipped at least once a year in some preparation that will kill scab or shall be deemed guilty of a misdemeanor and upon conviction thereof may be fined in any sum not exceeding one hundred dollars for each offense."

No doubt plaintiff in error would insist there as he does here that his sheep were healthy and no dipping was necessary. It may be possible also that it would be cheaper to pay a small fine than to dip these fifteen thousand sheep.

Referring again to Bulletin 21 we find it stated at pages 13 and 14:

"All matters connected with the vitality of the scab mite have an important bearing in explaining cases of indirect infection on roads over which scabby sheep have been driven, or in fields and sheds where they have been kept. From the facts now at our disposal we can lay down the following important rules:

Scabby sheep should never be driven upon a public road; sheds in which scabby sheep have been kept should be thoroughly cleaned, disinfected and aired, and should be left unused for *at least four weeks* (better two months) before clean sheep are placed in them; fields in which scabby sheep have been kept should stand vacant *at least four weeks* (better six or eight) before being used for clean sheep; a drenching rain will frequently serve to disinfect a pasture but it is well to whitewash the

posts against which scabby sheep have rubbed. Even after observing the precautions here given it is not possible to absolutely guarantee that there will be no reinfection, but the probabilities are against it."

After treating of the life of the parasite the Bulletin further says (page 14):

"Several practical lessons are to be drawn from these figures: first, it is seen that the parasites increase very rapidly, so that if scab is discovered in a flock, the diseased sheep should be immediately isolated; second, if new sheep are placed in a flock, they should either first be dipped, as a precautionary measure or they should at least be kept separate *for several weeks* to see whether scab developes; third, since the chances of infection are very great the entire flock should be treated even in case scab is found only in one or two animals; fourth, as dipping is not certain to kill the eggs, the sheep should be dipped a second time, the time being selected between the moment of hatching of eggs and the moment the next generation of eggs is laid."

As the sheep must necessarily be infected with mites in all stages of development even a second dipping will not entirely free the flock from disease, in fact, there is hardly any disease of domestic animals that requires more continuous and careful attention.

For a complete discussion of the nature of the disease we refer to the Bulletin. We also refer to the Rules and Regulations of the Bureau of Animal In-

dustry. By rule 4 (page 33 Bulletin No. 9) a ninety-day quarantine is established for all diseased animals or those which have been exposed to disease.

Plaintiff in error says in his brief:

> "All sheep in all parts of the country are liable to scabbies; it is a prevalent disease or rather than a disease, a difficulty in raising sheep. There are healthy sheep yet it seems as if the scab was almost a necessary incident to their handling. It has never been eradicated and never can be." (Brief pg. 6.)

We think that this speaks eloquently for the necessity of a quarantine and is a justification for the rigid statutes on the subject enacted in the great wool-growing states within the last five years. That the disease can never be cured is a mistake since it has been eradicated from Australia. (Pages 21 and 23 Bulletin.)

It is argued that the quarantine is unreasonable and bad faith may be imputed from the fact that the proclamation covered two months in the spring and from the further fact that it did not provide for an inspection and for a cure of sheep found diseased.

In reply we say that sheep are not usually moved from place to place in the winter time and owing to climatic conditions they are not dipped during that season. Owners do not desire to dip ewes until after the birth of the lambs. (Bulletin pg. 19). Spring is therefor a period of great danger. The period of sixty days is fixed in the proclamation so that the disease may have time to show itself and make it possible to de-

tect it, and particularly so that the time for shearing may be passed when the disease will certainly be discovered by the owner and may be more readily observed by the Inspector. In this connection it should be noticed that the entire period covered by this proclamation is sixty days and sheep are not required to wait sixty days at the State line before entering the State. Shearing time in the locality mentioned comes in May and June. As to an inspection and prescribing remedies we do not think we are bound to prescribe a cure for Utah sheep, but in any event it was provided by the proclamation that after a reasonable time had elapsed sufficient for the disease to show itself and the sheep had been sheared, that then "sheep can be moved into this State only upon compliance with the laws of the State of Idaho regarding the inspection and dipping of sheep."

As to the State laws referred to, see Laws of 1899 page 352.

It seems to be urged that the statute delegated legislative authority to the Governor. On this point we cited in the State Court:

Field vs. Clark, 143 U. S. 649.
Hurst vs. Warner, 60 N. W. 440.
Sang Lung vs. Jackson, 85 Fed. 502.
Los Angeles Co. vs. Spencer, 59 Pac. 202.
Martin vs. Witherspoon, 135 Mass. 175.
United States vs. Ormsbee, 74 Fed. 207.

That question, however, is not a Federal question and is not before this Court.

The courts of Idaho have ever been vigilant in upholding the Constitutional provision relative to interstate commerce. They held to a more stringent rule in Territory vs. Evans, 2 Idaho 634, than this Court did in Geer vs. Connecticut, 161 U. S. 519, where the Idaho case is cited. In State vs. Duckworth, 51 Pac. 456, the Court promptly declared void a statute so loosely and carelessly drawn as to interfere with commerce between the states.

We do not dispute the principles of law laid down in Railway Co. vs. Husen. It should be noted, however, that after the establishment of the Bureau of Animal Industry and after the disease of Texas fever came to be better understood the Department of Agriculture prescribed even a longer period of quarantine than the Kansas Statute. (Regulations Bureau of Animal Industry page 26.) The Husen case must be considered also in light of Kimmish vs. Ball, 129 U. S. 217, and Railway Co. vs. Haber, 169 U. S. 613.

In conclusion we say, that the State had the power to pass the law and authorize the quarantine, and that the quarantine directed as it was against an infected district for a period of sixty days was reasonable and therefore the judgment should be affirmed.

Respectfully submitted,

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For Defendant in Error.

NOTE.

In relation to sheep scab, we refer in addition to the Bulletin to the following:

Report Chief of Bureau of Animal Industry, 1899, pg. 247.
Same report for 1900, pg. 216.
Administrative Work of the Federal Government in relation to the Animal Industry, (1899), pg. 452.